

NON-DISCLOSURE AGREEMENT

1. New America Foundation (the "Receiving Party") acting as the representative of a group of researchers who came together in the Measurement Lab collaborative (M-Lab), understands that SamKnows Limited (the "Disclosing Party") has disclosed or may disclose raw, non-aggregated measurement data collected by SamKnows utilizing the Measurement Lab servers on behalf of the Federal Communications Commission (FCC) for the period of March 2012. This and relevant information might have commercial and other value in the Disclosing Party's business and is confidential or proprietary in nature (including, without limitation, trade secrets, patents, patent applications, copyrights, know-how, processes, ideas, inventions (whether patentable or not), formulas, computer programs, databases, data, reports, analyses, technical drawings, designs, algorithms, technology, layouts, designs, interfaces, schematics, names and expertise of employees and consultants, any other technical, business, financial, customer and product development plans, supplier information, forecasts, strategies and other confidential information), which to the extent previously, presently or subsequently disclosed to the Receiving Party is hereinafter referred to as "Confidential Information" of the Disclosing Party.
2. The receiving party will act as data administrator and M-Lab will use the information for analysis purposes only and agrees not to publish it in part or in total in raw, non-aggregated form until such data is released by the disclosing party. Data release is governed by M-Lab's data-release policies. The receiving party may publish aggregate findings based on this information specifically as an attachment to a versioned disclosure of an event affecting data collection on the Measurement Lab platform for the purposes of clearly defining the scope of impact on any measurements collected by any hosted experiment at the time of such an event. Publication of these findings will include release of the data, and will be governed by the M-Lab data release policies. Publication of these findings will adhere to the terms of M-Lab's data release policies, meaning that they will await the publication of a report using these data by the FCC or other entity, or 12 months from the collection of the data, whichever comes first. These findings do not constitute a "report" for the purposes of M-Lab's data release policies. Analysis of these data is necessary to ensure that the impact of the problems on the platform is clearly understood. In consideration of the parties' discussions, the parties agree as follows:
3. Access to any Confidential Information must have a legitimate "need to know" and will be provided to select researchers in the M-Lab collaborative who have a track record of working with and understanding such data. Each individual who receives access to Confidential Information will be bound by the terms of the NDA, meaning that they will not be permitted to share data with others unless approved by the data administrator, and they will not be permitted to use the data for anything apart from the purposes specified here..
4. Each party's obligations under this Agreement with respect to any portion of the other party's Confidential Information shall terminate when the Receiving Party can document that it: (a) is or becomes (through no improper action or inaction by the Receiving Party or any affiliate, agent, consultant or employee) generally available to the public; (b) was in its possession or known by it prior to receipt from the Disclosing Party free of any restrictive obligation of confidentiality; (c) was rightfully disclosed to it by a third party free of any restrictive obligation of confidentiality; or (d) was independently developed by the Receiving Party without use of or reference to the Confidential Information of the Disclosing Party. The Receiving Party may make disclosures required by a valid court order provided that the Receiving Party promptly notifies the Disclosing Party, uses reasonable efforts to limit disclosure and to obtain confidential treatment or a protective order, and has allowed the Disclosing Party to participate in the proceeding.
5. The parties recognize and agree that nothing contained in this Agreement shall be construed as granting any property rights, by license or otherwise, to any Confidential Information of the other party disclosed pursuant to this Agreement, or to any invention or any patent, copyright, trademark, or other intellectual property right that has issued or that may issue, based on such Confidential Information. Neither party shall make, have made, use or sell for any purpose any product or other item using, incorporating or derived from any Confidential Information of the other party.
6. Confidential Information shall not be reproduced in any form except as required to accomplish the intent of this Agreement. Any reproduction of any Confidential Information of the other party by either party shall remain the property of the Disclosing Party and shall contain any and all confidential or proprietary notices or legends which appear on the original, unless otherwise authorized in writing by the other party. Upon termination or expiration of the Agreement, or upon written request of the other party, each party shall promptly return to the other or destroy all documents and tangible materials representing the other's Confidential Information and all copies thereof.
7. This Agreement shall commence on the Effective Date (defined below) and terminate one (1) year thereafter, or upon publication of a paper or report issued by the FCC or other entity using these data, or by either party at any time upon thirty (30) days written notice to the other party, whichever comes first
8. This Agreement shall be governed by and construed in accordance with the law of California without reference to conflict of laws principles. Any disputes under this Agreement may be brought in the state courts and the Federal courts located in Santa Clara County, California, and the parties hereby consent to the personal jurisdiction and venue of these courts. This Agreement may not be amended except by a writing signed by both parties thereto. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be illegal, invalid or unenforceable, such provisions shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect.
9. Each party acknowledges that its breach of the Agreement will cause irreparable damage and hereby agrees that the other party shall be entitled to seek injunctive relief under this Agreement, as well as such further relief as may be granted by a court of competent jurisdiction. The Receiving Party will notify the Disclosing Party in writing immediately upon discovery of any loss or unauthorized disclosure of the Confidential Information of which it is aware.
10. Neither party shall export, directly or indirectly, any technical data acquired from the other pursuant to this Agreement or any product utilizing any such data to any country for which the U.S. Government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining such license or approval.

IN WITNESS WHEREOF,

the parties hereto have caused this Mutual Non-Disclosure Agreement (this Agreement) to be executed as of May 1, 2012 (the "Effective Date").

SAMKNOWS LIMITED

By: _____

Name & Title: _____

Date: _____

25 Harley Street, London, W1G 9BR

NEW AMERICA FOUNDATION

By: _____

Name & Title: Sascha Meinrath, Vice President, Open Technology Institute, New America Foundation

Date: _____

1899 L St., N.W., Suite 400, Washington, DC 20036